

CCRB CASE CLOSING FORM

Investigator assigned: Carlos J. Montañez	Team: 7	CCRB No.: 9703911	FADO: A, D
Date of incident: 10-17-97	Time of incident: 8:00pm	Location of incident: 123 rd St. & 111 th Ave., Queens	Pct. of occurrence: 106
Date reported: 10-28-97	Time reported: 11:30am	To whom/where/how reported: Complainant was a walk-in at CCRB	
Complainant-Victim: § 87(2)(b)	Victim(s):	Home address: § 87(2)(b)	
Witness(es):			
Subject officer(s) (include rank): Lt. Gary Messina Sgt. Steven Horodecki	Shield: 00000 04490	Tax: 874530 893173	Command: 106 106
Witness officer(s) (include rank): PO Matthew Syska Sgt. Donald Kelly PO Lucia Fay PO David Stein	14436 03669 29538 08872	918376 887208 915696 907400	106 106 106 106
Allegation(s) by letter:			Recommendation(s):
(A) Discourtesy in violation of PG 104-01: Sgt. Horodecki asked § 87(2)(b) "Don't make us go crazy looking for the shit! Where did you put the shit?"			§ 87(2)(g)
(B) Discourtesy in violation of PG 104-01: Lt. Messina asked § 87(2)(b) "What the fuck possessed you to tell me you had drugs on you?!"			§ 87(2)(g)
(C) Abuse of authority in violation of PG 104-01: MOS stated that Lt. Messina was going to go to work on § 87(2)(b) if he did not cooperate.			§ 87(2)(g)
(D) Abuse of authority in violation of PG 104-01: Lt. Messina threatened to hit § 87(2)(b)			§ 87(2)(g)
(E) Abuse of authority in violation of PG 104-01: Lt. Messina commanded that an unwarranted strip search of § 87(2)(b) be conducted.			§ 87(2)(g)

Summary of Allegations

On October 17, 1997 at approximately 8:00pm, § 87(2)(b) had made a call on a public phone on the corner of 123rd Street and 111th Avenue in Queens. Two uniformed MOS, PO Syska and Sgt. Horodecki, approached § 87(2)(b) and informed him that he had been observed making an exchange of cash for drugs. The officers held his arms, frisked and searched his pockets. The officers then handcuffed § 87(2)(b). PO Syska asked § 87(2)(b) where he had placed the shit. PO Syska then informed Lt. Messina over the radio that they had apprehended § 87(2)(b) and Lt. Messina instructed them to get § 87(2)(b) off of the avenue. PO Syska and Sgt. Horodecki escorted § 87(2)(b) to 120th Street, toward a parked RMP. PO Syska and Sgt. Horodecki frisked and searched § 87(2)(b) again. Sgt. Horodecki told § 87(2)(b) not to make them go crazy looking for the shit

and asked him where he had placed it. Lt. Messina then instructed the officers over the radio to place § 87(2)(b) in the RMP and to continue the questioning at the station house.

The officers placed § 87(2)(b) in the back seat and Lt. Messina instructed them over the radio to ensure that § 87(2)(b) lay down in the back of the RMP so that no one could see him. § 87(2)(b) was driven to what he believed was the site of a drug raid at the corner of 123rd Street and 111th Avenue. At this location two young men were also arrested by Sgt. Horodecki and PO Syska while § 87(2)(b) remained in the RMP.

PO Syska and Sgt. Horodecki then drove § 87(2)(b) to the 106th precinct station house. § 87(2)(b) acknowledged that he gave four different versions as to where the drugs were. § 87(2)(b) first told PO Syska and Lt. Messina that he had the drugs in his underwear. Lt. Messina ordered that § 87(2)(b) be brought to a restroom and strip-searched. A plainclothes officer present in the bathroom told § 87(2)(b) that Lt. Messina would "work on him" so § 87(2)(b) should make it easy for everyone and cooperate. During the strip search, Lt. Messina threatened to strike § 87(2)(b) if he did not cooperate and tell him where the drugs were. § 87(2)(b) felt Lt. Messina was about to punch him – something that § 87(2)(b) determined from Lt. Messina's body language and previous threats – so § 87(2)(b) told Lt. Messina that he hid the drugs in the side pocket of § 87(2)(b) coat so that the lieutenant would not strike him. Lt. Messina checked the coat, did not find anything, and asked § 87(2)(b) where the drugs were. § 87(2)(b) told Lt. Messina that the drugs might have fallen out in the car. Lt. Messina checked the RMP, found nothing, and returned to § 87(2)(b). § 87(2)(b) told Lt. Messina that he might have tossed the drugs away on the scene.

Lt. Messina left the station house. At this point the handcuffs were removed. When Lt. Messina returned he asked § 87(2)(b) what the fuck possessed him to tell him he had the drugs on him when he did not have anything. § 87(2)(b) told Lt. Messina he lied as a diversion because he believed Lt. Messina was about to punch him. § 87(2)(b) also told Lt. Messina that he would have told him anything in order to buy time and avoid being struck. Lt. Messina became upset and ordered that he be recuffed. PO Syska issued § 87(2)(b) a summons and released him.

Extent and Results of Investigation

L.T. MESSINA'S memobook reflected an entry for the tactical meeting at 4:00pm, another entry for the execution at § 87(2)(b) § 87(2)(b) at 5:15pm, and a final entry indicating he was out of service at the station house for administrative purposes. Lt. Messina stated the execution of the search warrant was a separate and distinct operation apart from the arrest of § 87(2)(b). Lt. Messina explained § 87(2)(b) arrest was in connection with a SNEU operation.

Lt. Messina had two entries concerning § 87(2)(b) arrest, an 8:00pm SNEU operation at 123rd & 111th, and an 8:50pm arrest of three en route to the station house. Lt. Messina explained in his statement that he observed § 87(2)(b) exchange cash for crack cocaine viles with two known dealers during the SNEU observation. Lt. Messina added the area is a drug prone location and the two known drug dealers have been arrested before. Lt. Messina relayed a description of § 87(2)(b) and his direction of flight to Sgt. Horodecki and PO Syska who apprehended § 87(2)(b) at 120th & 111th. Lt. Messina instructed Sgt. Horodecki and PO Syska to have § 87(2)(b) lie down in the back of the RMP when § 87(2)(b) passed the location where the two drug dealers were being arrested. This was done so as not to alert the dealers of their ensuing apprehension. Lt. Messina then transmitted descriptions of the drug dealers who were subsequently apprehended at 123rd & 111th. Lt. Messina stated Sgt. Horodecki, PO Syska, and § 87(2)(b) traveled in one RMP, and the two drug dealers were transported in the other RMP. Lt. Messina added the drug dealers and § 87(2)(b) never had any additional contact during the remainder of the incident.

Upon arriving at the station house, PO Syska informed Lt. Messina that § 87(2)(b) indicated he had the drugs in his underwear. Lt. Messina instructed PO Syska and an unidentified officer to bring § 87(2)(b) into the bathroom and uncuff him. Lt. Messina could not recall who the unidentified officer was. Lt. Messina was not present for the strip search but instructed the officers to fully inspect § 87(2)(b) pants searching for the drugs. After the search, PO Syska exited the bathroom and informed Lt. Messina that no drugs were found on § 87(2)(b). Lt. Messina went into the bathroom with PO Syska and asked § 87(2)(b) where the drugs were. Lt. Messina stated § 87(2)(b) did not complain about the search and never denied not having the drugs on him. § 87(2)(b) told Lt. Messina that the drugs could either be in the RMP or at the scene when Sgt. Horodecki and PO Syska initially approached him. Lt. Messina and Sgt. Horodecki returned to the location in search of the drugs while § 87(2)(b) dressed and was placed in the muster room.

Lt. Messina stated Sgt. Horodecki had informed him (Lt. Messina) never saw § 87(2)(b) "toss" the drugs away. Lt. Messina and Sgt. Horodecki returned to the station house. Lt. Messina went to the muster room and asked § 87(2)(b) why he had told him the drugs were in his underwear if he subsequently told him they could be in the RMP or at the arrest location. § 87(2)(b) told Lt. Messina that he admitted to having the drugs on him because that is what he thought Lt. Messina wanted to hear.

Lt. Messina stated § 87(2)(b) never complained about the handcuffs, and added that § 87(2)(b) is a heavy man and the cuffs could have probably caused greater discomfort to § 87(2)(b) rather than most people, due to his size. Lt. Messina stated Sgt. Horodecki had intermittent contact with § 87(2)(b) at the station house. Lt. Messina denied ever threatening § 87(2)(b) with physical force. Lt. Messina, however, stated that an officer might have referred to the drugs as "shit" because it is street parlance. Lt. Messina added that in that context the term "shit" is not discourteous. Lt. Messina stated that he never used any profanity in his questioning of § 87(2)(b). Lt. Messina expressed the probable cause for the strip search stemmed from § 87(2)(b) own admission of the location of the drugs. Lt. Messina denied ever tightening the handcuffs on § 87(2)(b) or instructing anyone to do so. Lt. Messina added that § 87(2)(b) was recuffed after the strip search because he was being held in the muster room due to the fact that the holding cell was full. Lt. Messina did not recall any officers in particular in the muster room while § 87(2)(b) was kept there. Lt. Messina explained that the muster room is a large open room where roll calls takes place and receives a lot of station house traffic. When questioned as to the possible positional asphyxia position § 87(2)(b) was placed in, Lt. Messina stated this is common practice in SNEU operations where handcuffed buyers are asked to lay down on their side in order not to tip off the sellers. Lt. Messina stated arrestees are never forcibly laid down, and that § 87(2)(b) was asked and complied.

PO SYSKA's memobook entries were similar to Lt. Messina's. PO Syska similarly explained the sequence of events for the SNEU observation. PO Syska and Sgt. Horodecki approached § 87(2)(b) after receiving information from Lt. Messina. PO Syska told § 87(2)(b) to place his hands behind his back and explained he was being arrested for buying drugs. PO Syska frisked § 87(2)(b) waistband for any weapons. PO Syska stated § 87(2)(b) did not struggle in any manner and had to be handcuffed with two handcuffs in a daisy-chain because he was unable to get his hands together behind his back.

PO Syska explained that he, Sgt. Horodecki, and § 87(2)(b) went to the location where the two sellers were – in a manner consistent to what Lt. Messina explained – and apprehended them. The officers then handcuffed the two sellers once Lt. Messina had arrived with his handcuffs. Sgt. Horodecki and PO Syska looked around for any drugs in the vicinity. PO Syska recalled Lt. Messina calling another police car in order to transport the two sellers to the station house. PO Syska could not recall the race or gender of the responding officer. PO Syska

recalled transporting § 87(2)(b) to the station house in Sgt. Horodecki's company but did not remember whether Lt. Messina came with them.

PO Syska stated the two sellers and § 87(2)(b) were kept separate at the station house and had no contact. PO Syska stated § 87(2)(b) was placed in the muster room. PO Syska did not know if there were officers present in the muster room with § 87(2)(b) because he was constantly in and out of the arrest processing room. PO Syska stated he did not participate in strip searching § 87(2)(b). PO Syska recalled Lt. Messina returning to the arrest scene in order to look for the drugs. PO Syska stated he was aware that no drugs were found on § 87(2)(b). PO Syska stated he was instructed to issue § 87(2)(b) a summons for obstructing pedestrian traffic. PO Syska did not recall § 87(2)(b) complaining about anything.

SGT. HORODECKI had a memobook entry for the search warrant at 5:00pm, three hours before the incident with § 87(2)(b) near 128th Street and 111th Avenue. Sgt. Horodecki described the SNEU observation and § 87(2)(b) apprehension in a manner consistent with the accounts from PO Syska and Lt. Messina. Sgt. Horodecki also similarly explained the placement of § 87(2)(b) into the RMP and the subsequent apprehension of the two sellers at 123rd and 111th. Sgt. Horodecki recalled § 87(2)(b) expressing, either at the scene or upon arrival at the station, that he had drugs in his pants. Sgt. Horodecki recalled that an unmarked vehicle was called in order to transport the two sellers to the station house. Sgt. Horodecki, PO Syska, and § 87(2)(b) traveled to the station house in the marked RMP. Sgt. Horodecki did not recall in which vehicle Lt. Messina returned to the station house.

Sgt. Horodecki stated that upon arrival at the station house, he went behind the desk in order to log in the arrests and the prisoners were taken to the arrest processing room. Sgt. Horodecki added that PO Syska processed the arrest papers while he made the command log entries. Sgt. Horodecki stated he did not participate in the strip search or the interrogation process. Sgt. Horodecki stated § 87(2)(b) later told Lt. Messina that he had thrown the drugs away at the scene so Lt. Messina asked him to accompany him. Sgt. Horodecki and Lt. Messina went to the scene and searched for any drugs to no avail. They returned to the station house at which point Sgt. Horodecki ended his tour.

SGT. KELLY'S sole memobook entry indicative of activity placed him at the 106th precinct station house at 4:00pm. Sgt. Kelly was working with PO Martin executing a search warrant at 128th Street and 111th Avenue in Queens. Sgt. Kelly stated he was rear security that day and Lt. Messina was present as the special operations lieutenant. Sgt. Kelly knew nothing of an arrest at 123rd or 120th Street along 111th Avenue. Sgt. Kelly had no recollection of Lt. Messina having a white male handcuffed and under arrest at the time of the search warrant execution. Sgt. Kelly had no knowledge of the incident or the allegations. Sgt. Kelly has no idea who § 87(2)(b) is. Sgt. Kelly stated PO Syska and Sgt. Horodecki were not present during the execution of this warrant.

PO FAY AND PO STEIN had no pertinent memobook entries. PO Fay and PO Stein were executing the search warrant at § 87(2)(b) and were working as front security on 111th Avenue. The officers knew nothing of the incident with a § 87(2)(b) and did not recall seeing Sgt. Horodecki at the scene. The officers stated Lt. Messina drove with them from the station house to the search warrant location and returned with them to the station house afterwards. The officers stated arrests were made and drugs were recovered pursuant to the search warrant. The officers stated Lt. Messina was not present at the search warrant location with prisoners from another incident. POs Fay and Stein knew nothing of the allegations.

§ 87(2)(b) contends a drug raid had taken place at 128th and 111th immediately after his arrest and that this location was where the two sellers were arrested. Police document requests revealed that search warrant had been executed at the location but specified no time. Memobook entries relating to the search warrant revealed

the execution took place at 5:00pm and an arrest was made at 5:05pm for a § 87(2)(b). Neither one of the two sellers detained and summonsed with § 87(2)(b) was named § 87(2)(b). The execution of the search warrant took place three hours before the SNEU observation operation was set up by Lt. Messina, Sgt. Horodecki, and PO Syska. § 87(2)(g)

[REDACTED]

Police document requests revealed that no stop and frisk report was filed, § 87(2)(b) was issued a summons for disorderly conduct. Although Sgt. Horodecki was not listed on the search warrant, he did have a memobook entry for it as he was working conditions with Lt. Messina. Finally, the radio run indicated no back-up units were requested or came to assist with the arrest of § 87(2)(b) by Sgt. Horodecki and PO Syska at 123rd Street and 111th Avenue.

§ 87(2)(b) filed his complaint on the same day of his medical examination. § 87(2)(b) claimed the handcuffs were too tight and that as a result his right hand is numb from the wrist to the tips of his thumb, index, and middle fingers. § 87(2)(b) received treatment eleven days later at § 87(2)(b). The medical records indicate § 87(2)(b) complained of pain and numbness in his right hand due to the placement of handcuffs two weeks ago. The records indicate a downgraded sensation in his right hand due to radial nerve neuropathy¹ and possible need for hand surgery. The records also indicate a previous car crash had caused injury to § 87(2)(b) right thumb in § 87(2)(b).

Conclusions and Recommendations

(A) DISCOURTESY IN VIOLATION OF PG 104-01: SGT. HORODECKI ASKED § 87(2)(b) “DON’T MAKE US GO CRAZY LOOKING FOR THE SHIT! WHERE DID YOU PUT THE SHIT?”

Although Sgt. Horodecki denied the allegation, Lt. Messina stated some officer might have made such a remark. Lt. Messina added that referring to drugs as “shit” is street parlance and is not discourteous in this context.
§ 87(2)(g)

[REDACTED]

(B) DISCOURTESY IN VIOLATION OF PG 104-01: LT. MESSINA ASKED § 87(2)(b) “WHAT THE FUCK POSSESSED YOU TO TELL ME YOU HAD DRUGS ON YOU?!”

Lt. Messina denied ever using any profanity in his remarks to § 87(2)(b) and claimed to have asked § 87(2)(b) the question posed in allegation B but without the courtesy. Sgt. Horodecki and PO Syska did not recall hearing any such remark from Lt. Messina. § 87(2)(b) stated that this remark was made within the context of Lt. Messina harassing him in an interrogation. § 87(2)(g)

[REDACTED]

¹ Merriam Webster Collegiate Dictionary – 10th Edition – an abnormal and usually degenerative state of the nervous system or nerves

§ 87(2)(g)

(C) ABUSE OF AUTHORITY IN VIOLATION OF PG 104-01: MOS STATED THAT LT. MESSINA WAS GOING TO GO TO WORK ON § 87(2)(b) IF HE DID NOT COOPERATE.

§ 87(2)(b) stated this allegation occurred in the bathroom when Lt. Messina was present. § 87(2)(b) stated there were five plainclothes male officers present but he could not describe any of them. § 87(2)(b) stated he heard one of these plainclothes officers make this threat. The officer could not have been Sgt. Horodecki or PO Syska as they were uniformed. Lt. Messina, Sgt. Horodecki, and PO Syska stated other officers might have been in the bathroom but they could not recall who. § 87(2)(g)

(D) ABUSE OF AUTHORITY IN VIOLATION OF PG 104-01: LT. MESSINA THREATENED TO HIT § 87(2)(b)

§ 87(2)(b) stated that Lt. Messina made physical gestures throughout his interrogation indicating he would strike § 87(2)(b) if he did not cooperate. § 87(2)(b) stated that Lt. Messina did not explicitly state he would strike him but his body language implied that he would. Lt. Messina denied physically threatening § 87(2)(b) in any manner and added that § 87(2)(b) fully cooperated with the questioning to the extent where he was providing a series of possible locations for the alleged drugs. Sgt. Horodecki and PO Syska did not recall any such threat made by Lt. Messina. § 87(2)(g)

(E) ABUSE OF AUTHORITY IN VIOLATION OF PG 104-01: LT. MESSINA COMMANDED THAT AN UNWARRANTED STRIP SEARCH OF § 87(2)(b) BE CONDUCTED.

§ 87(2)(g)

Patrol Guide procedure 110-2 delineates that strip searches will be conducted when there is reasonable suspicion "that weapons, contraband or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods." The procedure stipulates that it be conducted in a secure, private area in the absence of other arrestees and with no touching involved other than searches through hair. § 87(2)(g)

Investigator:

Caylor J. Montanez

Date: 06-29-98

Supervisor:

Jah P. Brown

Date: 6/29/98

Reviewed by:

J. Brown

Date: 6/30/98

Reviewed by:

J. Brown

Date: 7/6/98